

ORDINANCE NO. 28990

An ordinance providing for the abandonment of a portion of SMU Boulevard and a portion of Greenville Avenue located adjacent to City Block 5185 in the City of Dallas and County of Dallas, Texas; providing for the quitclaim thereof to 5640 SMU BLVD, L.P.; providing for the terms and conditions of the abandonment and quitclaim made herein; providing for the indemnification of the City of Dallas against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Dallas; providing for the payment of the publication fee; and providing an effective date for this ordinance.

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WHEREAS, the City Council of the City of Dallas, acting pursuant to law and upon the request and petition of 5640 SMU BLVD, L.P., a Delaware limited partnership, hereinafter referred to as **GRANTEE**, deems it advisable to abandon and quitclaim the hereinafter described tracts of land to **GRANTEE**, and is of the opinion that, subject to the terms and conditions herein provided, said portion of SMU Boulevard and portion of Greenville Avenue are not needed for public use, and same should be abandoned and quitclaimed to **GRANTEE**, as hereinafter stated; and

WHEREAS, the City Council of the City of Dallas is of the opinion that the best interest and welfare of the public will be served by abandoning and quitclaiming the same to **GRANTEE** for the consideration and subject to the terms and conditions hereinafter more fully set forth; **Now, Therefore,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the tract of land described in Exhibit A, which is attached hereto and made a part hereof for all purposes, be and the same is abandoned, vacated and closed insofar as the right, title and interest of the public are concerned; subject, however, to the conditions hereinafter more fully set out.

SECTION 2. That for and in monetary consideration of the sum of **TWENTY-FOUR THOUSAND NINETY AND 00/100 DOLLARS (\$24,090.00)** paid by **GRANTEE**, and the further consideration described in Sections 8, 9 and 10, the City of Dallas does by these presents **FOREVER QUITCLAIM** unto the said **GRANTEE**, subject to the conditions, reservations and exceptions hereinafter made and with the restrictions and upon the covenants below stated, all of its right, title and interest in and to the certain tract of land hereinabove described in Exhibit A. **TO HAVE AND TO HOLD** all of such right, title and interest in and to the property and premises, subject aforesaid, together with all and singular the rights, privileges, hereditaments and appurtenances thereto in any manner belonging unto the said **GRANTEE** forever.

SECTION 3. That upon payment of the monetary consideration set forth in Section 2, **GRANTEE** accepts the terms, provisions and conditions of this ordinance.

SECTION 4. That the City Controller is authorized to deposit the sum paid by **GRANTEE** pursuant to Section 2 above in the General Fund 0001, Department DEV, Balance Sheet 0519 and Department of Sustainable Development and Construction-Real Estate Division shall be reimbursed for the cost of obtaining the legal description, appraisal and other administrative costs incurred. The reimbursement proceeds shall be deposited in General Fund 0001, Department DEV, Unit 1183, Object 5011 and any remaining proceeds shall be transferred to the General Capital Reserve Fund 0625, Department BMS, Unit 8888, Revenue Source 8416.

SECTION 5. That the abandonment and quitclaim provided for herein are made subject to all present zoning and deed restrictions, if the latter exist, and are subject to all existing easement rights of others, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise, and are further subject to the conditions contained in Exhibit B, which is attached hereto and made a part hereof for all purposes.

SECTION 6. That the terms and conditions contained in this ordinance shall be binding upon **GRANTEE**, its successors and assigns.

SECTION 7. That the abandonment and quitclaim provided for herein shall extend only to the public right, title, easement and interest, and shall be construed to extend only to that interest the Governing Body of the City of Dallas may legally and lawfully abandon and vacate.

SECTION 8. That as a condition of this abandonment and as a part of the consideration or the quitclaim to **GRANTEE** herein, **GRANTEE**, its successors and assigns, agree to indemnify, defend, release and hold whole and harmless the City of Dallas of, from and against any and all claims for damages, fines, penalties, costs or expenses to persons or property that may arise out of, or be occasioned by or from: (i) the use and occupancy of the property described in Exhibit A by **GRANTEE**, its successors and assigns; (ii) the presence, generation, spillage, discharge, release, treatment or disposition of any Hazardous Substance on or affecting the area set out in Exhibit A; (iii) all corrective actions concerning any discovered Hazardous Substances on or affecting the area described in Exhibit A, which **GRANTEE**, its successors and assigns, agree to undertake and complete in accordance with applicable federal, state and local laws and regulations; and (iv) the abandonment, closing, vacation and quitclaim by the City of Dallas of the area set out in Exhibit A. **GRANTEE**, its successors and assigns, hereby agree to defend any and all suits, claims, or causes of action brought against the City of Dallas on account of same, and discharge any judgment or judgments that may be rendered against the City of Dallas in connection therewith. For purposes hereof, "Hazardous Substance" means the following: (a) any "hazardous substances" under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., as amended; (b) any "hazardous substance" under the Texas Hazardous Substances Spill Prevention and Control Act, TEX. WATER CODE, Section 26.261 et seq., as amended; (c) petroleum or petroleum-based products (or any derivative or hazardous constituents thereof or additives thereto), including without limitation, fuel and lubricating oils; (d) any "hazardous chemicals" or "toxic chemicals" under the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as amended; (e) any "hazardous waste" under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended; and (f) any "chemical substance" under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended. References to particular acts or codifications in this definition include all past and future amendments thereto, as well as applicable rules and regulations as now or hereafter promulgated thereunder.

SECTION 9. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall:

- a) Conform with the approved development plan and ensure that no on-street parking is eliminated.
- b) Provide a minimum 10-foot-wide unobstructed sidewalk parallel to SMU Boulevard as shown on the development plan. ADA-approved tree grates are not considered a sidewalk obstruction.

SECTION 10. That as a condition of this abandonment and as a part of the consideration for the quitclaim made herein, **GRANTEE** shall file a final replat of the adjoining properties prior to the issuance of any building permits affecting the tract of land abandoned and quitclaimed herein. This final replat shall be recorded by **GRANTEE** in the official real property records of the county in which the abandoned area is located after its approval by the City Plan Commission of the City of Dallas.

SECTION 11. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the official real property records of the county in which the abandonment areas are located, which certified copy shall be delivered to the Director of Department of Sustainable Development and Construction, or designee. Upon receipt of the monetary consideration set forth in Section 2, plus the fee for the publishing of this ordinance, which **GRANTEE** shall likewise pay, the Director of Department of Sustainable Development and Construction, or designee: (i) shall deliver to **GRANTEE** a certified copy of this ordinance, and (ii) is authorized to and shall prepare and deliver a **QUITCLAIM DEED** with regard to the areas abandoned herein, to **GRANTEE** hereunder, same to be executed by the City Manager on behalf of the City of Dallas, attested by the City Secretary and approved as to form by the City Attorney. The Director of Department of Sustainable Development and Construction, or designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

28990

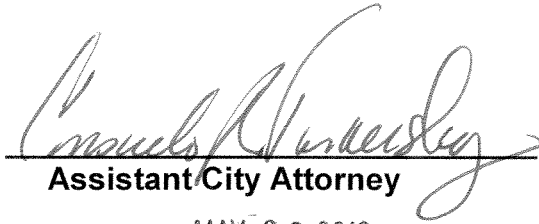
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SECTION 12. That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so ordained.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

THERESA O'DONNELL
Director of Department of Sustainable
Development and Construction

BY


Assistant City Attorney

BY


Assistant Director

Passed

MAY 22 2013

28990

130850

VARIABLE WIDTH RIGHT-OF-WAY ABANDONMENT

A Portion of
 Greenville Avenue and SMU Boulevard
 Adjacent to City of Dallas Block No. 5185
 Joel Sykes Survey, Abstract No. 1338
City of Dallas, Dallas County, Texas

BEING, an 803 square foot (0.018 acre) tract of land situated in the Joel Sykes Survey, Abstract No. 1338, Dallas County, Texas; said tract being adjacent to Block Number 5185, Official Numbers of the City of Dallas, Texas and that certain tract of land described in Special Warranty Deed to 5640 SMU BLVD, L.P. recorded in Instrument No. 201000328086 of the Official Public Records of Dallas County, Texas; said tract also being a portion of SMU Boulevard (a 100-foot wide right-of-way, formerly Yale Boulevard, changed by City of Dallas ordinance No. 27431) and a portion of Greenville Avenue (a variable width right-of-way) as described in Judgment No. CC-80-399-D to the City of Dallas recorded in Volume 80218, Page 4809 of the Deed Records of Dallas County, Texas; said 803 square foot tract being more particularly described as follows (Bearing system for this survey is based on a bearing of Due East for the south right-of-way line of SMU Boulevard according to said Special Warranty Deed to 5640 SMU BLVD, L.P.):

BEGINNING, at a 5/8-inch iron rod with "HUITT-ZOLLARS" cap found for corner in the west line of said City of Dallas tract and an east line of the said 5640 SMU BLVD tract; said point being at the intersection of the west right-of-way line of said Greenville Avenue and the south right-of-way line of said SMU Boulevard;

THENCE, Due West, along the north line of the said 5640 SMU BLVD tract and the said south line of SMU Boulevard, a distance of 45.38 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set for corner;

THENCE, North 74 degrees, 29 minutes, 05 seconds East, departing the said north line of the 5640 SMU BLVD tract and the said south line of SMU Boulevard, a distance of 46.63 feet to a point for corner (not set);

THENCE, Due East, a distance of 8.33 feet to a point for corner (not set);

THENCE, Due South, a distance of 65.13 feet to a point for corner (not set);

THENCE, Due West, a distance of 8.49 feet to a 1/2-inch iron rod with "PACHECO KOCH" cap set for corner in the said west line of Greenville Avenue, the said west line of the City of Dallas tract and the said east line of the 5640 SMU BLVD tract;

THENCE, along the said west line of Greenville Avenue, the said west line of the City of Dallas tract and the said east line of the 5640 SMU BLVD tract, the following two (2) calls:

North 01 degrees, 49 minutes, 19 seconds East, a distance of 22.69 feet to a 5/8-inch iron rod with "HUITT-ZOLLARS" cap found at an angle point;

(For SPRG use only)

Reviewed By: JLDate: 2-24-12SPRG NO: 2297

VARIABLE WIDTH RIGHT-OF-WAY ABANDONMENT

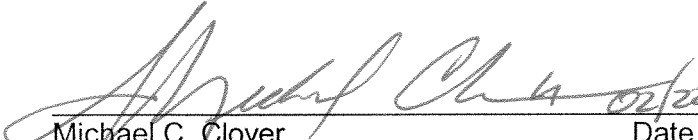
A Portion of
Greenville Avenue and SMU Boulevard
Adjacent to City of Dallas Block No. 5185
Joel Sykes Survey, Abstract No. 1338
City of Dallas, Dallas County, Texas
(Continued)

North 00 degrees, 13 minutes, 58 seconds West, a distance of 29.98 feet to the POINT
OF BEGINNING;

CONTAINING, 803 square feet or 0.018 acres of land, more or less.

(A survey plat of even survey date herewith accompanies this description.)

The undersigned, Registered Professional Land Surveyor, hereby certifies that the foregoing description accurately sets out the metes and bounds of the tract described.


Michael C. Clover Date
Registered Professional Land Surveyor No. 5225
Pacheco Koch Consulting Engineers, Inc.
8350 N. Central Expwy, #1000, Dallas TX 75206
(972) 235-3031
TX Reg. Surveying Firm LS-100080-00
Revised: 01/26/2012
02/22/2012



R.O.W. ABANDONMENT-REVISED 2.doc
2878-07.382EX2R-2.DWG jsa

(For SPRG use only)

Reviewed By: JL
Date: 2-24-12
SPRG NO: 2297

DRAWN BY SBP/MMW	CHECKED BY MCC/NK	SCALE 1"=20'	DATE JAN. 2012	JOB NUMBER 2878-07.382
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Pacheco Koch
8350 N. CENTRAL EXPWY, SUITE 1000
DALLAS, TX 75206 972.235.3031
TX REG. ENGINEERING FIRM F-469
DALLAS • FORT WORTH • HOUSTON
TX REG. SURVEYING FIRM LS-100080-00



The undersigned, Registered Professional Land Surveyor, hereby certifies that this plat of survey accurately sets out the metes and bounds of the tract of land described.

Michael C. Clover
Registered Professional Land Surveyor No. 5526
Date: 01/26/2012
Revised: 02/22/2012

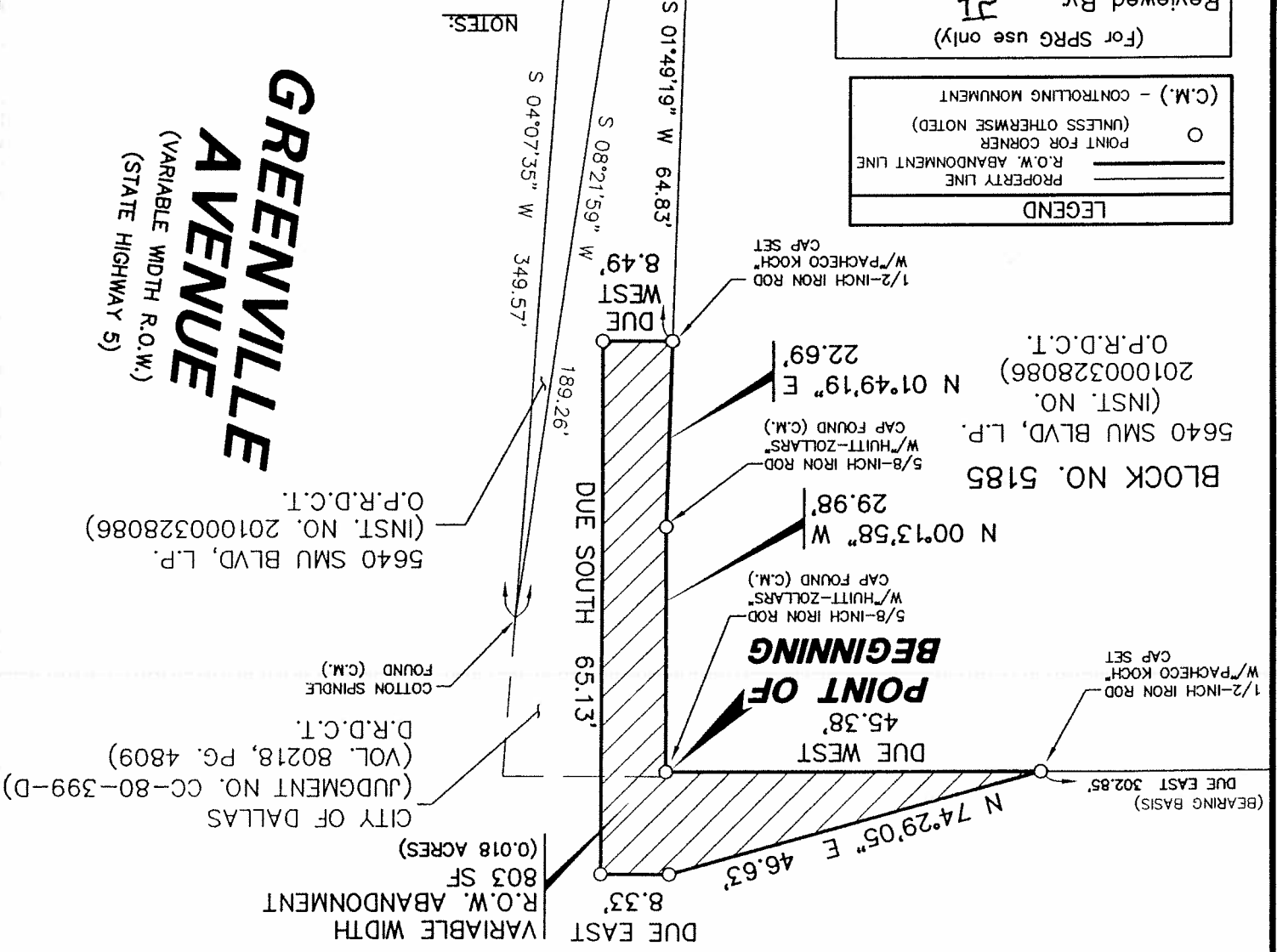
SPRG NO: 2297
Date: 2-24-12
Reviewed By: JL
(For SPRG use only)

LEGEND

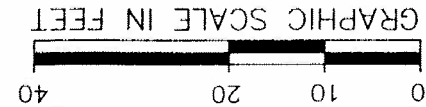
○ (C.M.) - CONTROLLING MONUMENT
(UNLESS OTHERWISE NOTED)
PROPERTY LINE
R.O.W. ABANDONMENT LINE
POINT FOR CORNER

VARIABLE WIDTH RIGHT-OF-WAY ABANDONMENT
A PORTION OF GREENVILLE AVENUE AND SMU BOULEVARD ADJACENT TO CITY OF DALLAS BLOCK 5185 JOEL SYKES SURVEY, ABSTRACT NO. 1338 CITY OF DALLAS, DALLAS COUNTY, TEXAS
PAGE 3 OF 3

1. A metes and bounds description of even survey date herewith accompanies this plat of survey.
2. Bearing system for this survey is based on a bearing of Due East for the south right-of-way line of SMU Boulevard according to Special Warranty Deed to 5640 SMU BLVD, L.P. recorded in Instrument No. 201000328086 of the Official Public Records of Dallas County, Texas.



(100-FOOT WIDE RIGHT-OF-WAY)
(FORMERLY YALE BOULEVARD)
(CHANGED BY ORDINANCE NO. 27431)



130850

28990
EXHIBIT B

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ADDITIONAL ABANDONMENT PROVISIONS

That as a condition hereof, this abandonment is subject to any utilities or communication facilities, including without limitation water and wastewater lines, gas lines, and storm sewers, ("Facilities") presently located within the abandoned area described in Exhibit "A", owned and/or operated by the City of Dallas or any utility or communications company, public or private, ("Utility") and to the rights of any Utility for the use of the abandoned area for its Facilities. It is the intent of the foregoing to confirm and maintain and there is hereby reserved and excepted unto the City of Dallas, and not abandoned or conveyed hereunder, an easement (to which this abandonment is made expressly subject) over, upon, under, through, in, and across the abandoned area for each Utility for its respective Facilities located therein at the time of this abandonment, together with the right to make any subsequent alterations, additions, expansions, upgrades or modifications to such Facilities as may, from time to time be deemed necessary or convenient by the Utility owning and/or operating same. No buildings, structures (above or below ground) or trees shall be constructed or placed within the abandoned area without written consent of each affected Utility. Each Utility shall have the full right to remove and keep removed all or part of any buildings, fences, trees, or other improvements or growths which in any way may endanger or interfere with the construction, maintenance or efficiency of its respective Facilities lying within the abandoned area and shall at all times have the full right of ingress and egress to or from and upon the abandoned area for the purposes of reconstructing, removing, relocating, inspecting, patrolling, maintaining, expanding, upgrading, and/or adding to all or part of its Facilities without the necessity at any time of procuring the permission of anyone. The easement reserved hereunder and the conditions and restrictions to which this abandonment is subject shall remain for the benefit of the applicable Utility and/or operators of the Facilities until said Facilities are removed and relocated from the abandoned area. The relocation, removal or adjustment of any or all such Facilities, if made necessary by GRANTEE'S (whether one or more natural persons or legal entities) use of the abandonment area, shall be at the expense of GRANTEE herein, or GRANTEE'S successors and assigns. Should GRANTEE'S relocation or removal of the Facilities require the obtaining of new easements, the acquisition of same shall be at the expense of GRANTEE, GRANTEE'S successors and assigns. If any of the Facilities (or relocations thereof) are allowed to remain on any part of the abandoned area, the easements and buildings restrictions provided herein shall remain thereon. Upon removal or relocation of all of the Facilities, any easements reserved or created herein relating to such removed or relocated Facilities shall terminate, and any building restrictions herein created shall cease.